

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

CR No. 99-105L

JOSE GENAO

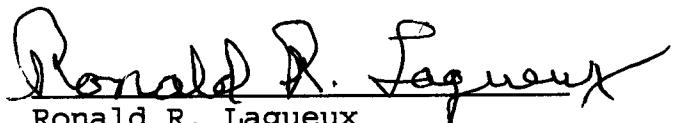
MEMORANDUM AND ORDER

This is Defendant's motion for review of sentencing pursuant to Rule of Civil Procedure 60(b)(6) although it was filed in this criminal case. The Court interprets this motion as an attempt to vacate and reargue the Court's Memorandum and Order entered on June 1, 2004, denying his petition filed pursuant to 28 U.S.C. § 2255, Genao v. United States of America, C.A. No. 03-461L. He reiterates several of the claims raised in that original 2255 petition. In addition, Defendant adds the claim that the Court should vacate his sentence of 262 months imprisonment pursuant to the Supreme Court's ruling in United States v. Booker, 543 U.S. 220 (2005).

This is obviously a successive 2255 petition under the guise of a Rule 60(b)(6) motion because Defendant addresses several identical claims raised in his original petition. Because Defendant did not obtain an order from the Circuit Court authorizing this successive petition and because Booker does not apply retroactively to this case, the Court denies this attempt

to revisit these issues in the form of a motion under Rule
60(b)(6).

It is so ordered.



Ronald R. Lagueux
Senior Judge
November 2, 2006